THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.8805 of 1999

DATED: 18.04.2007

BETWEEN:

A.P.State Wakf Board rep. by its
Chief Executive Officer, Nampally, Hyderabad.

…Petitioner.

and

Municipal Corporation of Hyderabad, rep.
by its Commissioner office at Tank Bund,
Saifabad, Hyderabad, and others.

....Respondents

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.8805 of 1999

ORDER

This writ petition is filed seeking mandamus declaring the inaction of the first respondent in re-delivering the possession of the land of 1,300 sq. yards attached to Hakeem Meer Wazeer Ali Mosque and non-payment of the compensation amount in respect of the land in an extent of 1,400 sq. yards situated at Fathedarwaja, Mishrigunj, Hyderabad to the petitioner, as illegal, and also consequently direct the first respondent to re-deliver the said land and to pay the compensation amount respectively.

2. It is the case of the petitioner that the Mosque Hakeem Meer Wazeer Ali with its attached grave yard and lands situated at Mishrigunj, Hyderabad, which is called Wazeer Ali Bagh, is the Wakf property consisting of 9,000 sq. yards, and in pursuance of the meeting held in the Chamber of the Chief Secretary on 16.01.1982, the Chairman of the Wakf Board was requested to handover an extent of open land admeasuring 2,700 sq. yards out of the said 9,000 sq. yards of the said Wakf property to the first respondent for the purpose of road widening, and accordingly, the petitioner has given consent to it. While so, when the petitioner came to know that their land, which was acquired by the first respondent, was not used for the purpose for which it was acquired, and the same has been used for the purpose of

rehabilitation of private party, whose property has been affected in road widening, the petitioner filed Writ Petition No.823 of 1997 against the first respondent and it was disposed of on 5.12.1988 with the following order:

> "The land is needed for public purpose viz., widening of the road. The Wakf Board is not prepared to handover the land. When it is needed for public purpose, the Municipal Corporation is directed to acquire the land under Municipal Act or under the Land Acquisition Act."

Further, the petitioner contends that in spite of the orders passed in W.P.No.823 of 1997, the first respondent failed to take necessary legal action for the acquisition of the land, but continued to illegally encroach upon the Wakf property.

Be that as it may, one of the worshipers of the said Mosque filed Public Interest Writ Petition, being W.P.No.8777 of 1987, for declaring the action of the Municipal Corporation, Hyderabad, in occupying the land of the Mosque in an extent of 2,700 sq. yards on the plea of the road widening, as illegal, and also to direct the said Corporation to restore the same to the Mosque. However, the same was allowed on 16.09.1993 observing as hereunder:

> "It is not disputed that no proceedings under the Land Acquisition Act were initiated pursuant to the judgment of this Court dated 5.12.1988. In view of the statement made by the learned counsel for the petitioners that the petitioners have no objection for the acquisition of the land of 1,400 sq. yards for purpose of laying road, the question of acquisition of land, as far as 1,400 sq. yards is concerned, will not arise. So far as the remaining land is concerned, in view of the judgment of this Court in W.P.No.823/86 dated 5.12.1988, the Municipal Corporation of Hyderabad, without following the procedure under the Land Acquisition Act, cannot be allowed to allot the same to the third parties in order to provide rehabilitation to those who are displaced. There

> is no substance in the argument of the learned counsel for the Municipality that the Writ Petition is liable for dismissal on the ground of laches as the petitioners are aggrieved by the illegal action of the Municipality in allotting the land to third parties and the Writ Petition was filed immediately on coming to know of the allotment. The writ Petition is therefore allowed to the above extent, following the Judgment in W.P.No.823/86 dated 5.12.1988, with costs."

It is also the grievance of the petitioner that in spite of allowing W.P.No.8777 of 1987 as referred above and also making a representation before the first respondent, it is neither completing the land acquisition proceedings nor re-delivering the possession of the land in an extent of 1,300 sq. yards and paying the compensation amount to the petitioner for the acquired land in an extent of 1,400 sq. yards. Hence, this writ petition is filed.

3. Heard the learned counsel for the petitioner and the Standing Counsel for Municipal Corporation, Hyderabad.

4. Despite the fact that notices are served on the respondents, no counter has been filed. Hence, this Court has no option except to accept the contentions advanced by the learned counsel for the petitioner.

5. Accordingly, this Writ Petition is allowed and the respondents' Corporation is hereby directed to pay the compensation in so far as 1,400 sq. yards of land, in which a road was laid, is concerned, and further the respondents' Corporation is directed to initiate the Land Acquisition proceedings in so far as the remaining 1,300 sq. yards of land is concerned within a period of six weeks from the date of receipt of a copy of this order, failing which, it is made clear that the said land

shall be re-delivered to the petitioner.

5. With the above observations, this Writ Petition is allowed. No order as to costs.

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(GOPALA KRISHNA TAMADA,J)

18.04.2007
v v